Supreme Court, U.S.
FILED
FEB 22 1979
MICHAEL RODAK, JR., CLERK

SUPREME COURT OF THE UNITED STATES

Case No. 78-1026

DAVID E. KLINGAMAN, trading as
BANNER SIGHTSEEING COMPANY, and
JOY R. KLINGAMAN,

Petitioners,

vs

MARTIN L. SOMMERS,

Respondent

MOTION TO DISMISS

1. BASIS FOR DISMISSAL
2. GENERAL STATEMENT OF THE CASE
3. ARGUMENT

MARTIN L. SOMMERS
Pro Se
1380 Barbizon Lane
Naples, FL 33942
Tel. No. 813 774-1054

INDEX

	Page
MOTION TO DISMISS.	1
BASIS FOR DISMISSAL.	2
GENERAL STATEMENT OF THE CASE. .	3,4
ARGUMENT	5,6
CERTIFICATE OF SERVICE	7

MOTION TO DISMISS

Respondent pursuant to Rule 16 moves to dismiss and would show as follows:

BASIS FOR DISMISSAL

That the grounds upon which Petitioners move the Court for jurisdiction does not present a substantial federal question and the Judgment to be reviewed rests on adequate non-federal basis.

GENERAL STAEMENT OF THE CASE

The Petitioners' General Statement of the Case is chronologically correct but editorally is a set of gross misrepresentations. The simple fact is that Petitioners sued Respondent under a fictitious name for specific performance. Pursuant to a Motion to Dismiss Petitioners amended their pleading to add the true owners of the company in accordance with the discovery.

Petitioners won the case and Respondent was ordered to specifically perform the contract. Respondent then performed his part of the contract. Pursuant to a Motion for Rehearing, the Court stated that it had retained jurisdiction to enforce the performance of the total contract.

Petitioners then failed to perform by removing the boat from the jurisdiction and refusing to return it.

Petitioners were simply ordered to return the boat and were found in contempt when they failed to do so. The Court then assessed money damages against Petitioners pursuant to the contract for their failure to pay the agreed upon rent.

ARGUMENT

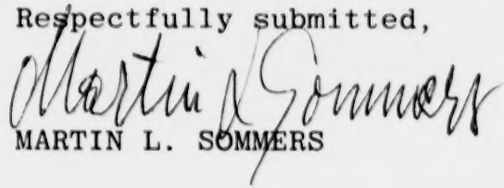
Petitioners came under the jurisdiction of the Florida Courts by filing a lawsuit in Florida based on a Florida contract and there is no substantial federal question involved. The Petitioners picked their forum and filed the lawsuit. Respondent did not pick a forum nor did Respondent desire the lawsuit. The Judgment rests on simple contract law of the State of Florida. With reference to due process of law, the only person served was the Defendant, who is the Respondent here. There is no known provision of the law where it is necessary to serve a Plaintiff with original process nor is the Respondent, who is Defendant below, under an obligation to inquire if the Petitioner, Joy R. Klingaman, who was the Plaintiff below, actually knows that she is a Party-Plaintiff.

The argument with reference to out of state personal property is a sham. The property is and always was personal property properly licensed in the State of Florida and leased on a temporary basis to be taken to another jurisdiction.

The Court obtained jurisdiction pursuant to Petitioners lawsuit and never lost jurisdiction over either the property or the persons.

WHEREFORE, Respondent prays the Court to dismiss the appeal as no substantial federal question has been answered and the matter has been completely disposed of on non-federal grounds in the Court of the State of Florida.

Respectfully submitted,



MARTIN L. SOMMERS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the foregoing has been furnished to David E. Klingaman, trading as Banner Sightseeing Company and Joy R. Klingaman, 11700 Charles Road, Silver Spring, Maryland 20906 by U.S. Mail on this 20 day of February, 1979.

MARTIN L. SOMMERS
Pro Se
1380 Barbizon Lane
Naples, FL 33942
Tel. No. (813) 774-1054